IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELATE CIVIL JURISDICTION

WRIT PETITION NO.4318 OF 1999

The Maharashtra State Co-operative Bank Ltd. & Anr. ..Petitioners

Vs.

The State of Maharashtra and Ors. ..Respondents

Mr.B.R.Naik for Petitioners
Mr.R.M.Patne, A.G.P. for Respondents

CORAM: F.I. REBELLO &
S.P. KUKDAY, JJ.
DATE: 3RD MARCH, 2005.

P.C.

. Petitioners had advanced loan to the Society, now under liquidation namely Respondent No.3. From the affidavit of Khan A. Gani, Administrator, in paragraph 15 it appears that this Court has taken a view, that the claims of the Petitioners are as unsecured creditors. The Petitioner has already been paid Rs.48 lacs towards outstanding dues, which according to the Adminstrator at the time of filing the affidavit are to the tune of Rs.315 lacs.

2. Though the Petitioner had raised various challenges at the hearing of this petition on behalf of the Petitioner, the challenges are restricted only to the contention that the Respondent No.1 which has contributed share capital in Respondent

No.3, cannot be treated as secured creditor and be paid amounts by Respondent No.5. So far as that submission is concerned in the reply in paragraph No.10, the Administrator has denied that he proposes to give Rs.23 lacs to State Government/Respondent No.1 against its contribution of share capital. It is pointed out that total contribution of Respondent no.1 to share capital is Rs.77 to 78 lacs and Respondent No.1 claims as secured creitors.

. Considering Respondent no.1 is only a share holder it cannot be treated because of its share holding as a secured creditor. From the affidavit it further appears, that as of the date of affidavit only an amount of Rs.16.29 lacs was available for distribution.

3. Considering the Provision in M.C.S. Act, the requirement is firstly to make payment to the secured creditors and if secured creditors if there be any amount after their debts are satisfied then to pay to the unsecured creditors. If there be no secured creditors then to the unsecured creditors prorata, to the extent of the claim of the unsecured creditors.

4. Considering the above, today if there be

still amounts available with Respondent No.5 for distribution the same should be distributed firstly to secured creditors if there be any, then to the unsecured creditors prorata.

. The exercise to be completed within three months from today.

. Rule made partly absolute accordingly. No order as to costs.

(F.I.REBELLO,J.)

(S.P. KUKDAY,J.)